

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTHONY KYLES,

Petitioner,

v.

Case Number: 04-CV-71412

ANDREW JACKSON,

Respondent.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

On August 26, 2005, the Court issued an opinion and order denying Petitioner's application for a writ of habeas corpus. On December 1, 2005, the court issued an order declining to issue a certificate of appealability. See *Castro v. United States*, 310 F.3d 900 (6th Cir. 2002) (holding that district court is required to rule on certificate of appealability when notice of appeal is filed, regardless of whether a motion has been filed). Thereafter, on December 8, 2005, Petitioner filed a motion for a certificate of appealability.¹ Inasmuch as the court has already ruled on the issues presented in Petitioner's motion, the court will deny the motion.

¹Given Petitioner's incarcerated status, it is likely that the court's order and Petitioner's motion crossed in the mail. For this reason, the court declines to interpret Petitioner's motion as a motion for reconsideration. Even if the court were to so construe it, the motion would be denied because Petitioner has failed to (1) "demonstrate a palpable defect by which the court and the parties have been misled," so (2) show that "correcting the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(g)(3).

Accordingly, IT IS ORDERED that Petitioner's "Motion for Certificate of Appealability" [Dkt. # 45] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 15, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 15, 2005, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522